



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-1370 FAX (603) 271-1381



July 8, 2002

Webber Oil Company, Inc.
700 Main Street
Bangor, Maine 04401

**CERTIFIED MAIL (7099 3400 0003 0687 2523)
RETURN RECEIPT REQUESTED**

Attn: Mr. Larry K. Mahaney

Re: Notice of Proposed Administrative Fine and Hearing No. AF 02-023

Dear Mr. Mahaney:

The New Hampshire Department of Environmental Services, Air Resources Division, is proposing that administrative fines totaling \$1,300 be imposed against Webber Oil Company, Inc. pursuant to RSA 125-C:15 for violations relating to the Stage II gasoline vapor recovery system at Somersworth Citgo.

You are required to respond to this notice. You have a right to a hearing to contest these allegations before the fine can be imposed. Please respond by August 8, 2002, using the enclosed form.

If you wish to have an informal meeting to discuss these issues, please contact the DES Legal Unit at (603) 271-6330. If you have any questions regarding this matter, please call Joseph Ritz at (603) 271-1391.

Sincerely,


COPY

Pamela G. Monroe
Compliance Bureau Administrator
Air Resources Division

Enclosure

cc G. Rule, DES Legal Unit
R. Kurowski, EPA Region 1
J. McLin, Mayor of Somersworth



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700 Main Street
Bangor, Maine 04401

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
AND HEARING
No. AF 02-023**

I. Introduction

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Air Resources Division ("the Division") to Webber Oil Company, pursuant to RSA 125-C:15. The Division is proposing that fines totaling \$1,300 be imposed against Webber Oil Company for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. Parties

1. The Department of Environmental Services, Air Resources Division, is an administrative agency of the State of New Hampshire, having in its principal office at 6 Hazen Drive, Concord, NH.
2. Webber Oil Company is a corporation registered in the state of Maine having a mailing address of 700 Main Street, Bangor, Maine.

III. Summary of Facts and Law Supporting Claim

1. RSA 125-C authorizes the Department of Environmental Services ("DES") to regulate sources of air pollution. RSA 125-C:4 authorizes the Commissioner of DES to adopt rules relative to the prevention, control, abatement, and limitation of air pollution in New Hampshire. Pursuant to this authority, the Commissioner has adopted NH Admin. Rules Env-A 100 *et seq.*
2. RSA 125-C:15,I-b(b) authorizes the Commissioner to impose administrative fines of up to \$2,000 per offense for violations of any rule adopted pursuant to RSA 125-C.
3. Env-A 1205.19 and 1205.20 require gasoline-dispensing facilities in Hillsborough, Merrimack, Rockingham and Strafford counties that meet certain throughput criteria to install a California Air Resources Board ("CARB") certified Stage II vapor recovery system.
4. Webber Oil Company is the owner of a gasoline dispensing facility, doing business as Somersworth Citgo located at 420 Route 108, Somersworth, Strafford County, NH 03878 ("the Facility"). The facility meets the throughput requirements specified in Env-A 1205.19.
5. On March 19, 1998, the Air Resources Division ("Division") issued a Letter of Deficiency No. ARD 98-019 to the Facility for failing to re-test the Stage II vapor recovery system within 90 days prior to the expiration date of the certificate of compliance as required by Env-A 1205.
6. On April 29, 1998, the Division issued Certificate of Compliance No. II-980127 ("the Certificate") to the Facility. The Certificate expired on November 1, 2000.
7. Env-A 1205.27(b) states that a Stage II certificate of compliance shall be valid for no more than three years.

8. Env-A 1205.24(a)(2) requires the owner or operator of an applicable gasoline dispensing facility to re-test a Stage II system within 90 days prior to the expiration date of any certification of compliance issued by the Division to the owner.
9. Env-A 1205.23 requires the owner or operator of an applicable gasoline dispensing facility to notify the division in writing at least 5 working days prior to any proposed testing of the date and time such testing will occur and the name of the person who is responsible for such testing.
10. Env-A 1205.28(b) requires the owner or operator of an applicable gasoline dispensing facility to pay a non-refundable renewal fee of \$200 to the Division on or before the expiration date of the Certificate.
11. On February 23, 2001, Division personnel contacted the Facility manager, Mr. Frank Smart, by telephone and notified him that the Certificate expired November 1, 2000, that the Stage II system must be re-rested, and that a \$200 renewal fee was due to the Division along with a notification form. A copy of the blank notification form was faxed to the Facility.
12. On July 11, 2001, Division personnel again contacted the Facility manager, Mr. Frank Smart, by telephone and notified him that the Certificate had expired November 1, 2000, that the Stage II system must be re-tested, and that a \$200 renewal fee was due to the Division along with the notification form. A blank notification form was faxed to the Facility. During the telephone conversation, Mr. Smart indicated that the Facility had installed a Healy VP 1000 vapor recovery system sometime during 1999.
13. On July 23, 2001, the Facility submitted to the Division the non-refundable renewal fee of \$200 and the notification form, as required by Env-A 1205.28(b). The notification form indicated that a Healy VP 1000A Vapor Vac System had been installed on March 31, 1999. This modification to the Stage II system had been completed without prior notification to the Division.
14. Env-A 1205.25 requires the owner of an applicable gasoline dispensing facility that is subject to Stage II requirements to notify the Division in writing at least 5 days prior to any construction, installation or significant modification involving the Stage II system.
15. Env-A 1205.03(o) defines significant modification as any construction or alteration of a Stage I or Stage II system other than normal upkeep or maintenance.
16. Env-A 1205.23(a) requires the owner of applicable gasoline dispensing facility performing a significant modification to a Stage II system to test the system for compliance within 15 days of completion of improvements.
17. Env-A 1205.28(a) requires the owner of an applicable gasoline dispensing facility to pay a non-refundable fee of \$200 to the Division with the submittal of the notification of construction, installation, or significant modification of a Stag II system.
18. The installation of the Healy VP 1000A Vapor Vac, installed on March 31, 1999, constitutes a significant modification as defined in Env-A 1205.03(o).
19. On November 27, 2001, the Facility successfully passed the required Stage II vapor recovery re-test.
20. On January 2, 2002, the Division issued to the Facility Certificate of Compliance No. 2-11030110733, with an expiration date of November 1, 2003.

IV. Violations Alleged and Proposed Administrative Fines

1. Webber Oil Co., Inc. has violated Env-A 1205.25 by failing to notify the Division in writing at least 5 days prior to any construction, installation, or significant modification involving a Stage II system (i.e. the installation of the Healy VP 1000A system). The Division has determined that Violation 1 is a major deviation from the requirements with moderate potential for harm. RSA 125-C:15,I-b(b) specifies a fine range of between \$1,251 and \$1,750. At this time, the Division is not sending a fine for this violation.
2. Webber Oil Co., Inc. has violated Env-A 1205.23(a) by failing to re-test the Stage II vapor recovery system within 15 days of performing a significant modification to their system. The Division has determined that Violation 2 is a major deviation from the requirements with moderate potential for harm. RSA 125-C:15,I-b(b) specifies a fine range of between \$1,251 and \$1,750. The Division is seeking a fine of \$1,300 for this violation.
3. Webber Oil Co., Inc. has violated Env-A 1205.28(a) by failing to pay the \$200 renewal fee required as the result of performing a significant modification of a Stage II vapor recovery system. The Division has determined that Violation 3 is a minor deviation from the requirements with minor potential for harm. RSA 125-C:15,0-b(b) specifies a fine range of between \$100 and \$1,000. At this time, the Division is not seeking a fine for this violation.

The total fine being sought is \$1,300.

V. Required Response, Opportunity for Hearing

Pursuant to Env-C 601.06, you are required to respond to this notice. Please respond no later than August 8, 2002, using the enclosed colored form.

1. If Webber Oil Company would like to have a hearing, please sign the appearance section of the colored form and return it to the DES Legal Unit, as noted on the form. A Notice of Scheduled Hearing will be issued.
2. If Webber Oil Company chooses to waive the hearing and pay the proposed fine, please have the authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.
3. If Webber Oil Co., Inc. wishes to discuss the possibility of settling the case, please have the authorized representative sign the appearance and return it to the DES Legal Unit and call the DES Legal Unit to indicate Webber Oil Company's interest in settling. Webber Oil Company is not required to be represented by an attorney. If Webber Oil Company chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

VI. Determination of Liability for Administrative Fines

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that Webber Oil Company committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the things sought to be proved is true.

If the Division proves that Webber Oil Company committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

- ❖ Pursuant to Env-C 601.09, the fine will be **reduced by 10%** for each of the circumstances listed below **that Webber Oil Company proves**, by a **preponderance of the evidence**, applies in this case:

The violation was a one-time or non-continuing violation, **and** Webber Oil Company did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** Webber Oil Company did not benefit financially, whether directly or indirectly, from the violation.


2. At the time the violation was committed, Webber Oil Company was making a good faith effort to comply with the requirement that was violated.
3. Webber Oil Company has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to Webber Oil Company's case, which was not known to the Division at the time the fine was proposed.

*******IMPORTANT NOTICE*******

An administrative fine hearing is a formal hearing. Any hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that Webber Oil Company committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is Webber Oil Company's opportunity to present testimony to present testimony and evidence that Webber Oil Company did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If Webber Oil Company has any evidence, such as photographs, business records or other documents, that Webber Oil Company believes show that Webber Oil Company did not commit the violation(s) or that otherwise supports Webber Oil Company's position, Webber Oil Company should bring the evidence to the hearing. Webber Oil Company may also bring witnesses (other people) to the hearing to testify on Weber Oil Company's behalf.

If Webber Oil Company wishes to have an informal meeting to discuss the issues, Webber Oil Company must contact the DES Legal Unit at (603) 271-6330 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.state.nh.us.des). If Webber Oil Company has any questions about this matter, please contact the DES Legal Unit at (603) 271-6330.


COPY
Robert R. Scott
Chief Air Programs Manager
Air Resources Division

Enclosure

cc Gretchen Rule, DES Legal Unit
Susan Alexant, DES Hearings and Rules Attorney
R. Kurowski, US EPA
Town Council, Town of Somersworth
ARD Enforcement File